IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 19TH SEPTEMBER 2007 / 28TH BHADRA 1929

Bail Appl..No. 5528 of 2007()

[CRIME NO.256/07 OF KODUVALLY POLICE STATION]

PETITIONERS/ACCUSED 4,6 &7:

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1. ABDUL NAZAR K.K., S/O.ABDUL RAHIMAN,
   23 YEARS, KANIYARAKKAL, AVILORA AMSOM,
   KODUVALLY.

2. SHAMSUDHEEN K.K., S/O.ABDUL RAHIMAN,
   AGED 20 YEARS, KANIYARAKKAL, AVILORA AMSOM,
   KODUVALLY.

3. ABDUL RAHEEM.K.K, S/O.ABDUL RAHIMAN,
   AGED 28 YEARS, KAIVELIKKADAVU,
   AVILORA, KADUVALLY.

BY ADV. SRI.K.A.SALIL NARAYANAN

RESPONDENTS:

STATE OF KERALA REPRESENTED BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.S.U.NAZER

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 19/09/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

B.A.No.5528 of 2007

Dated this the 19th day of September, 2007

ORDER

Application for anticipatory bail. The petitioners are accused 2, 3 & 5. They face allegations, inter alia, under Section 308, 323 and 324 r/w 149 I.P.C. The alleged incident took place on 27.08.07. There allegedly was a dispute between some travellers in a sumo van and the accused. The defacto complainant allegedly reached the scene and attempted to intervene. He was then assaulted by the accused persons. The defacto complainant's father also tried to intervene and he has suffered a fracture.

2. The learned counsel for the petitioners submits that the petitioners are absolutely innocent. At any rate, it cannot be assumed or inferred that they have any malice against the defacto complainant and his father. Even allegedly the occurrence took place when the defacto complainant and the victim intervened in a prior dispute between two other groups. The allegation under Section 308 I.P.C is totally unjustified. It is, in these circumstances, prayed that directions under Section 438 Cr.P.C in favour of the petitioners.

3. After discussions at the Bar, the learned Public Prosecutor accepts that the B.A filed by the petitioners can be considered as if

there is no allegation under Section 308 I.P.C. But the learned Public Prosecutor submits that even then this is not a fit case where directions under Section 438 Cr.P.C can or ought to be issued in favour of the petitioners. The petitioners must follow the normal and ordinary course of appearing before the Investigating Officer or the learned Magistrate having jurisdiction and then seek regular bail.

4. I am satisfied that there is merit in the opposition by the learned Public Prosecutor. I agree that there can be a direction to the learned Magistrate to consider the application for bail as if the allegation under Section 308 I.P.C is not there at all. The learned Magistrate can consider the application for regular bail on the other allegations including the allegation that the victim has suffered a fracture. Consequently an offence under Section 326 I.P.C is also alleged.

5. This application is, in these circumstances, dismissed, but I may hasten to observe that if the petitioner surrenders before the Investigating Officer or the learned Magistrate and applies for bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits and expeditiously. Such application shall be considered reckoning that there is no allegation under Section 308 I.P.C.

(R.BASANT, JUDGE)

rtr/-